

PT 00-47

Tax Type: Property Tax

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

GOOD NEWS
BIBLE CHURCH,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 00-PT-0018
(98-16-1232)
P.I.N: 13-26-314-038

RECOMMENDATION FOR DISPOSITION
PURSUANT TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCE: Mr. Todd M. Van Baren of Hoogendoorn, Talbot, Davids, Godfrey & Milligan on behalf of the Good News Bible Church (hereinafter the "applicant").

SYNOPSIS: This matter comes to be considered pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination in this matter on February 3, 2000. Said determination found that real estate identified by Cook County Parcel Index Number 13-26-314-038 (hereinafter the "subject property") did not qualify for exemption from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq* (hereinafter the "Code") because the entire subject property was not in exempt ownership and not in exempt use.

At issue herein are: (1) whether applicant held an ownership interest in the subject property during any part of the 1998 assessment year; and, (2) whether a

specifically identifiable portion of the subject property, that being an apartment unit measuring 2,189.51 sq. ft. (hereinafter referred to as the “portion in dispute”), was “used exclusively for religious purposes,” as required by Section 15-40 of the Code, during any part of the 1998¹ assessment year.

The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on April 26, 1999. The Board reviewed applicant’s complaint and recommended to the Department that the requested exemption be denied for lack of proper evidence. The Department accepted this recommendation by issuing the aforementioned determination.

Applicant filed a timely appeal as to this partial denial but then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that applicant’s motion for summary judgment be denied.

FINDINGS OF FACT:

1. The Department’s jurisdiction over this matter and its position therein are established by the determination, issued by the Office of Local Government Services on February 3, 2000, finding that the entire subject property is not in exempt ownership and not in exempt use.

1. Applicant’s motion seeks relief for the 1998 and 1999 tax years. However, the only exemption complaint that is presently before me is the one that pertains to the 1998 assessment year.

Each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass’n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980). For this reason, applicant may be required to relitigate its entitlement to a property tax exemption on an annual basis. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). Therefore, the 1999 exemption claim is not properly raised in this proceeding and shall receive no further consideration herein.

2. Applicant, an evangelical Christian organization, obtained ownership of the subject property by means of a warranty deed dated October 8, 1998. Applicant Motion Ex. A, B, C.
3. The subject property is located at 3608 W. Wrightwood Chicago, IL and improved with a 2 story building that contains 3 apartment units. Two of the apartment units are located on the first floor of the subject property. The remaining unit is located on the third floor. Applicant Motion Ex. A.
4. Applicant concedes that one of the two first floor units, and the second floor unit, are not in exempt use. It does, however, seek exemption for the portion in dispute, which consists of the second of the two first-floor apartment units. Applicant Motion Ex. F.
5. The portion in dispute occupies 2,189.51 sq. ft. or 46.53%² of the total improvement area. Applicant Motion Ex. B, F.
6. Applicant intended to use the portion in dispute for church offices. It took a number of steps toward developing the portion in dispute for such purposes, including replacing windows and performing exterminating work, after it purchased the subject property. It also stored office equipment and religious decorations in this space throughout the remainder of 1998. However, applicant submitted no evidence establishing the location, parcel index number and tax-exempt status of the church that was to be served by this office and storage space. Applicant Motion Ex. F; Administrative Notice.

CONCLUSIONS OF LAW:

2. $2,189.51 / 4,705.87$ (total improvement area) = .4653 (rounded four places past the decimal) or 46.53%.

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in this case. Therefore, the issues for decision herein necessarily become ones of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). Those issues are, per the Department's determination: (1) whether applicant owned the subject property at any point during the 1998 assessment year; and, (2) whether applicant's 1998 use of the portion in dispute qualify as "exclusively ... religious," as within the meaning of Section 15-40 of the Property Tax Code. For the following reasons, I conclude they do not.

The warranty deed submitted as Applicant Motion Ex. No. B establishes that applicant obtained an ownership interest in the subject property on October 8, 1998. Consequently, applicant did own all of the subject property, including the portion in dispute, throughout that 23% of the 1998 assessment year which occurred between October 8, 1998 and December 31, 1998. However, for the following reasons, applicant has failed to prove that its post-ownership uses of the portion in dispute were "exclusively religious" within the meaning of Section 15-40.

The word "exclusively" when used in Section 200/15-40 and other property tax exemption statutes means the "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). As applied to the uses of property, a religious purpose means "a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction." People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde

Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911). Furthermore, storage and other similar areas can be exempted from real estate taxation, but only if applicant proves that its use thereof is “reasonably necessary” to facilitate its use of another exempt property. Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985, 987 (4th Dist. 1992) (day care center that limited its enrollment strictly to children of employees who worked at a charitable hospital and its affiliated corporations held exempt). *See also*, Evangelical Hospital Ass’n. v. Novak, 125 Ill. App.3d 439 (2nd Dist. 1984) (property used to for no purpose other than providing centralized administrative services to five charitable hospitals held exempt); Evangelical Hospitals Corp. v. Illinois Department Of Revenue, 223 Ill. App.3d 225, 231 (2nd Dist. 1992) (part of office building actually used to provide administrative services for charitable hospitals held exempt).

The documents applicant submitted in support of its motion for summary judgment fail to disclose that applicant in fact owned any exempt property during the tax year in question. These documents also do not reveal the location, parcel index number and tax-exempt status of the church that was to be served by applicant’s use of the portion in dispute.

It is well established that: (1) applicant bears the burden of proof in all exemption matters (Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994)); the standard of proof which applicant must satisfy in order to sustain that burden is clear and convincing evidence (*Id.*); (3) statutes conferring property tax exemptions are to be strictly construed (People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v.

Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987); and, (4) any doubts or debatable questions that arise in exemption matters must be resolved in favor of taxation.

Id.

Applicant's failure to submit evidence that precisely identifies the location of the property that was to be served by its use of the portion in dispute, and confirms the tax-exempt status of the property to be served, creates doubts as to whether its post-purchase uses of the subject property were "reasonably necessary" to effectuate its use of another specifically identifiable exempt property, as required by Memorial Child Care v. Department of Revenue, *supra*. Applicant is not entitled to the benefit of such doubts as a matter of law. People ex rel. Nordland v. Home for the Aged, *supra*. Therefore, it is not entitled to judgment as a matter of law on this issue of exempt use.

The facts that applicant is: (1) exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (Applicant Motion Ex. E); and, (2) exempt from payment of Use and other related Illinois sales taxes under Section 3-5(4) of the Use Tax Act, 35 ILCS 105/1, *et seq.* (Applicant Motion Ex. D), do not alter the preceding conclusion for two reasons.

First, the former exemption only establishes that applicant qualifies as an exempt organization for purposes of Section 501(c)(3) of the Internal Revenue Code. That provision does not, however, preempt Section 15-40 of the Property Tax Code. Nor does Section 501(c)(3) preempt the very specific exemption requirements contained therein. Hence, applicant's Section 501(c)(3) exemption is legally insufficient to establish conformity with those requirements.

Second, neither the Section 501(c)(3) nor the State sales tax exemption proves that any part of the subject property, including the portion in dispute, was actually used for exempt purposes, as required by Section 15-40, during the tax year in question. In re Application of Clark v. Marion Park, Inc., 80 Ill. App. 3d 1010, 1012-13 (2nd Dist. 1980), citing People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). Consequently, these exemptions do not provide a legally sufficient basis for concluding that applicant is entitled to judgment as a matter of law on the issue of exempt use. Therefore, applicant's motion for summary judgment should be denied.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate real estate identified by Cook County Parcel Index Number 13-26-314-038 not be exempt from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

November 22, 2000

Date

Alan I. Marcus
Administrative Law Judge